

Farm Service Agency, USDA

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§§ 767.203–767.250 [Reserved]

Subpart F—Exception Authority

§ 767.251 Agency exception authority.

On an individual case basis, the Agency may consider granting an exception to any regulatory requirement or policy of this part if:

(a) The exception is not inconsistent with the authorizing statute or other applicable law; and

(b) The Agency's financial interest would be adversely affected by acting in accordance with published regulations or policies and granting the exception would reduce or eliminate the adverse effect upon the its financial interest.

PARTS 768—769 [RESERVED]

PART 770—INDIAN TRIBAL LAND ACQUISITION LOANS

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AUTHORITY: 5 U.S.C. 301, 25 U.S.C. 488.

SOURCE: 66 FR 1567, Jan. 9, 2001, unless otherwise noted.

§ 770.1 Purpose.

This part contains the Agency's policies and procedures for making and servicing loans to assist a Native American tribe or tribal corporation with the acquisition of land interests within the tribal reservation or Alaskan community.

§ 770.2 Abbreviations and definitions.

(a) *Abbreviations.*

FSA Farm Service Agency, an Agency of the United States Department of Agriculture, including its personnel and any successor Agency.

ITLAP Indian Tribal Land Acquisition Program.

USPAP Uniform Standards of Professional Appraisal Practice.

(b) *Definitions.*

Administrator is the head of the Farm Service Agency.

Agency is Farm Service Agency (FSA).

Appraisal is an appraisal for the purposes of determining the market value of land (less value of any existing improvements that pass with the land) that meets the requirements of part 761 of this chapter.

Applicant is a Native American tribe or tribal corporation established pursuant to the Indian Reorganization Act seeking a loan under this part.

Loan funds refers to money loaned under this part.

Native American tribe is:

(1) An Indian tribe recognized by the Department of the Interior; or

(2) A community in Alaska incorporated by the Department of the Interior pursuant to the Indian Reorganization Act.

Rental value for the purpose of rental value write-downs, equals the average actual rental proceeds received from the lease of land acquired under ITLAP. If there are no rental proceeds, then rental value will be based on market data according to § 770.10(e)(4).

Reservation is lands or interests in land within:

(1) The Native American tribe's reservation as determined by the Department of the Interior; or

(2) A community in Alaska incorporated by the Department of the Interior pursuant to the Indian Reorganization Act.

Reserve is an account established for loans approved in accordance with regulations in effect prior to February 8, 2001 which required that an amount equal to 10 percent of the annual payment be set aside each year until at least one full payment is available.

Tribal corporation is a corporation established pursuant to the Indian Reorganization Act.

[66 FR 1567, Jan. 9, 2001, as amended at 70 FR 7167, Feb. 11, 2005; 72 FR 51990, Sept. 12, 2007]

§ 770.3 Eligibility requirements.

An applicant must:

(a) Submit a completed Agency application form;

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(b) Except for refinancing activities authorized in § 770.4(c), obtain an option or other acceptable purchase agreement for land to be purchased with loan funds;

(c) Be a Native American tribe or a tribal corporation of a Native American tribe without adequate uncommitted funds, based on Generally Accepted Accounting Principles, or another financial accounting method acceptable to Secretary of Interior to acquire lands or interests therein within the Native American tribe's reservation for the use of the Native American tribe or tribal corporation or the members of either;

(d) Be unable to obtain sufficient credit elsewhere at reasonable rates and terms for purposes established in § 770.4;

(e) Demonstrate reasonable prospects of success in the proposed operation of the land to be purchased with funds provided under this part by providing:

(1) A feasibility plan for the use of the Native American tribe's land and other enterprises and funds from any other source from which payment will be made;

(2) A satisfactory management and repayment plan; and

(3) A satisfactory record for paying obligations.

(f) Unless waived by the FSA Administrator, not have any outstanding debt with any Federal Agency (other than debt under the Internal Revenue Code of 1986) which is in a delinquent status.

(g) Not be subject to a judgment lien against the tribe's property arising out of a debt to the United States.

(h) Have not received a write-down as provided in § 770.10(e) within the preceding 5 years.

[66 FR 1567, Jan. 9, 2001, as amended at 70 FR 7167, Feb. 11, 2005]

§ 770.4 Authorized loan uses.

Loan funds may only be used to:

(a) Acquire land and interests therein (including fractional interests, rights-of-way, water rights, easements, and other appurtenances (excluding improvements) that would normally pass with the land or are necessary for the proposed operation of the land) located within the Native American tribe's res-

ervation which will be used for the benefit of the tribe or its members.

(b) Pay costs incidental to land acquisition, including but not limited to, title clearance, legal services, land surveys, and loan closing.

(c) Refinance non-United States Department of Agriculture preexisting debts the applicant incurred to purchase the land provided the following conditions exist:

(1) Prior to the acquisition of such land, the applicant filed a loan application regarding the purchase of such land and received the Agency's approval for the land purchase;

(2) The applicant could not acquire an option on such land;

(3) The debt for such land is a short term debt with a balloon payment that cannot be paid by the applicant and that cannot be extended or modified to enable the applicant to satisfy the obligation; and

(4) The purchase of such land is consistent with all other applicable requirements of this part.

(d) Pay for the costs of any appraisal conducted pursuant to this part.

§ 770.5 Loan limitations.

(a) Loan funds may not be used for any land improvement or development purposes, acquisition or repair of buildings or personal property, payment of operating costs, payment of finder's fees, or similar costs, or for any purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agriculture commodity as further established in exhibit M to subpart G of part 1940 of this title.

(b) The amount of loan funds used to acquire land may not exceed the market value of the land (excluding the value of any improvements) as determined by a current appraisal.

(c) Loan funds for a land purchase must be disbursed over a period not to exceed 24 months from the date of loan approval.

(d) The sale of assets that are not renewable within the life of the loan will require a reduction in loan principal equal to the value of the assets sold.

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§ 770.6 Rates and terms.

(a) *Term.* Each loan will be scheduled for repayment over a period not to exceed 40 years from the date of the note.

(b) *Interest rate.* The interest rate charged by the Agency will be the lower of the interest rate in effect at the time of the loan approval or loan closing, which is the current rate available in any FSA office. Except as provided in § 770.10(b) the interest rate will be fixed for the life of the loan.

§ 770.7 Security requirements.

(a) The applicant will take appropriate action to obtain and provide security for the loan.

(b) A mortgage or deed of trust on the land to be purchased by the applicant will be taken as security for a loan, except as provided in paragraph (c) of this section.

(1) If a mortgage or deed of trust is to be obtained on trust or restricted land and the applicant's constitution or charter does not specifically authorize mortgage of such land, the mortgage must be authorized by tribal referendum.

(2) All mortgages or deeds of trust on trust or restricted land must be approved by the Department of the Interior.

(c) The Agency may take an assignment of income in lieu of a mortgage or deed of trust provided:

(1) The Agency determines that an assignment of income provides as good or better security; and

(2) Prior approval of the Administrator has been obtained.

§ 770.8 Use of acquired land.

(a) *General.* Subject to § 770.5(d) land acquired with loan funds, or other property serving as the security for a loan under this part, may be leased, sold, exchanged, or subject to a subordination of the Agency's interests, provided:

(1) The Agency provides prior written approval of the action;

(2) The Agency determines that the borrower's loan obligations to the Agency are adequately secured; and

(3) The borrower's ability to repay the loan is not impaired.

(b) *Title.* Title to land acquired with a loan made under this part may, with

the approval of the Secretary of the Interior, be taken by the United States in trust for the tribe or tribal corporation.

§ 770.9 Appraisals.

(a) The applicant or the borrower, as appropriate, will pay the cost of any appraisal required under this part.

(b) Appraisals must be completed in accordance with § 761.7 of this chapter.

§ 770.10 Servicing.

(a) *Reamortization*—(1) *Eligibility.* The Agency may consider reamortization of a loan provided:

(i) The borrower submits a completed Agency application form; and

(ii) The account is delinquent due to circumstances beyond the borrower's control and cannot be brought current within 1 year; or

(iii) The account is current, but due to circumstances beyond the borrower's control, the borrower will be unable to meet the annual loan payments.

(2) *Terms.* The term of a loan may not be extended beyond 40 years from the date of the original note.

(i) Reamortization within the remaining term of the loan will be predicated on a projection of the tribe's operating expenses indicating the ability to meet the new payment schedule; and

(ii) No intervening lien exists on the security for the loan which would jeopardize the Government's security priority.

(3) *Consolidation of notes.* If one or more notes are to be reamortized, consolidation of the notes is authorized.

(b) *Interest rate reduction.* The Agency may consider a reduction of the interest rate for an existing loan to the current interest rate as available from any Agency office provided:

(1) The borrower submits a completed Agency application form;

(2) The loan was made more than 5 years prior to the application for the interest reduction; and

(3) The Department of the Interior and the borrower certify that the borrower meets at least one of the criteria contained in paragraph (e)(2) of this section.

(c) *Deferral.* The Agency may consider a full or partial deferral for a period not to exceed 5 years provided:

(1) The borrower submits a completed Agency application form;

(2) The borrower presents a plan which demonstrates that due to circumstances beyond their control, they will be unable to meet all financial commitments unless the Agency payment is deferred; and

(3) The borrower will be able to meet all financial commitments, including the Agency payments, after the deferral period has ended.

(d) *Land exchanges.* In the cases where a borrower proposes to exchange any portion of land securing a loan for other land, title clearance and a new mortgage on the land received by the borrower in exchange, which adequately secures the unpaid principal balance of the loan, will be required unless the Agency determines any remaining land or other loan security is adequate security for the loan.

(e) *Debt write-down*—(1) *Application.* The Agency will consider debt write-down under either the land value option or rental value option, as requested by the borrower.

(i) The borrower must submit a completed Agency application form;

(ii) If the borrower applies and is determined eligible for a land value and a rental value write-down, the borrower will receive a write-down based on the write-down option that provides the greatest debt reduction.

(2) *Eligibility.* To be eligible for debt write-down, the borrower (in the case of a tribal corporation, the Native American tribe of the borrower) must:

(i) Be located in a county which is identified as a persistent poverty county by the United States Department of Agriculture, Economic Research Service pursuant to the most recent data from the Bureau of the Census; and

(ii) Have a socio-economic condition over the immediately preceding 5 year period that meets the following two factors as certified by the Native American tribe and the Department of the Interior:

(A) The Native American tribe has a per capita income for individual enrolled tribal members which is less than 50 percent of the Federally estab-

lished poverty income rate established by the Department of Health and Human Services;

(B) The tribal unemployment rate exceeds 50 percent;

(3) *Land value write-down.* The Agency may reduce the unpaid principal and interest balance on any loan made to the current market value of the land that was purchased with loan funds provided:

(i) The market value of such land has declined by at least 25 percent since the land was purchased as established by a current appraisal;

(ii) Land value decrease is not attributed to the depletion of resources contained on or under the land;

(iii) The loan was made more than 5 years prior to the application for land value write-down;

(iv) The loan has not previously been written down under paragraph (e)(4) of this section and has not been written down within the last 5 years under this paragraph, and

(v) The borrower must meet the eligibility requirements of paragraphs (a)(1)(ii) or (iii) of this section.

(4) *Rental value write-down.* The Agency may reduce the unpaid principal and interest on any loan, so the annual loan payment for the remaining term of each loan equals the average of annual rental value of the land purchased by each such loan for the immediately preceding 5-year period provided:

(i) The loan was made more than 5 years prior to the rental value writedown;

(ii) The description of the land purchased with the loan funds and the rental values used to calculate the 5 year average annual rental value of the land have been certified by the Department of the Interior;

(iii) The borrower provides a record of any actual rents received for the land for the preceding 5 years, which will be used to calculate the average rental value. This record must be certified by the Department of the Interior. For land that has not been leased or has not received any rental income, the borrower must provide a market value rent study report for the preceding 5 years, which identifies the average annual rental value based on the market data. The market value rent

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study report must be prepared by a certified general appraiser and meet the requirements of USPAP.

(iv) The borrower has not previously received a write-down under this paragraph and has not had a loan written down within the last 5 years under paragraph (e)(3) of this section, and

(v) The borrower must meet the eligibility requirements of paragraph (a)(1)(ii) or (iii) of this section.

(f) *Release of reserve.* Existing reserve accounts may be released for the purpose of making ITLAP loan payments or to purchase additional lands, subject to the following:

(1) A written request is received providing details of the use of the funds;

(2) The loan is not delinquent;

(3) The loan adequately secured by a general assignment of tribal income.

[66 FR 1567, Jan. 9, 2001; 66 FR 47877, Sept. 14, 2001, as amended at 70 FR 7167, Feb. 11, 2005; 72 FR 51990, Sept. 12, 2007]

PART 771—BOLL WEEVIL ERADICATION LOAN PROGRAM

Sec.

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AUTHORITY: 5 U.S.C. 301; 7 U.S.C. 1989; and Pub. L. 104-180, 110 Stat. 1569.

SOURCE: 67 FR 59771, Sept. 24, 2002, unless otherwise noted.

§ 771.1 Introduction.

The regulations in this part set forth the terms and conditions under which loans are made through the Boll Weevil Eradication Loan Program. The regulations in this part are applicable to applicants, borrowers, and other parties involved in the making, servicing, and

liquidation of these loans. The program's objective is to assist producers and state government agencies in the eradication of boll weevils from cotton producing areas.

§ 771.2 Abbreviations and definitions.

The following abbreviations and definitions apply to this part:

(a) Abbreviations:

APHIS means the Animal and Plant Health Inspection Service of the United States Department of Agriculture, or any successor Agency.

FSA means the Farm Service Agency, its employees, and any successor agency.

(b) Definitions:

Extra payment means a payment derived from the sale of property serving as security for a loan, such as real estate or vehicles. Proceeds from program assessments and other normal operating income, when remitted for payment on a loan, will not be considered as an extra payment.

Non-profit corporation means a private domestic corporation created and organized under the laws of the State(s) in which the entity will operate whose net earnings are not distributable to any private shareholder or individual, and which qualifies under the Internal Revenue Service code.

Restructure means to modify the terms of a loan. This may include a modification of the interest rate and/or repayment terms of the loan.

Security means assets pledged as collateral to assure repayment of a loan in the event of default on the loan.

State organization means a quasi-state run public operation exclusively established and managed by state and/or non-state employees, with all employees currently dedicated to the specific task of eliminating the boll weevil from the cotton growing area of the state.

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§ 771.4 Eligibility requirements.

(a) An eligible applicant must:

(1) Meet all requirements prescribed by APHIS to qualify for cost-share grant funds as determined by APHIS, (FSA will accept the determination by